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## THE BOARD OF APPEALS, DEPARTMENT OF THE INTERIOR<sup>1</sup>

EDWARD C. FINNEY

*Member of the Board*

In order to understand the reason for a board of appeals, and something of its functions, it is essential to have a general idea of the system of handling and disposing of the public lands, their resources, and all other matters within the jurisdiction of the department of the interior.

It has been the wise policy of the United States so to dispose of its lands and resources as to encourage the establishment of homes and the extraction and use of minerals, rather than to seek to derive a revenue therefrom. The agricultural lands of the public domain are freely given to citizens who will establish their homes, erect improvements, and cultivate the soil. The taking of the minerals is permitted under what amounts to a gift, conditioned upon certain development work; so with the use of water for irrigation, for power, and for municipal and domestic purposes.

Through the general land office the department of the interior disposes of the lands, minerals, and the right to occupy the public domain for the conservation and transmission of water and power. Through the reclamation service it builds irrigation projects and aids the settler in learning the art of farming and fruit growing by the application of water to the desert. Through the geological survey it explores the mountain fastnesses for coal, oil, and other minerals; classifies them, and gives to the public some idea not only where the minerals may be found but their quantity and accessibility. Through the bureau of Indian affairs it deals not only with the personal well-being of the Indians but with their reservations and tribal lands and the resources

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therein. For the acquirement, possession, or use of these various lands and resources there is a keen rivalry among citizens, and the more valuable, the keener the rivalry. This necessitates an adjudication of the priorities and relative rights of citizens and a consideration of the laws applicable thereto, as well as the equities of the parties in interest.

With respect to the public lands and resources particularly, a well-defined system of administration and adjudication has existed for fifty years or more, and rules of practice and regulations somewhat analogous to the rules of courts have been evolved for government. In matters involving the acquisition or use of the public lands and their resources, for instance, provision is made for primary tribunals or trial courts in the shape of local land offices, situate in the immediate vicinity and presided over by officers known as the register and receiver. Before these officers filings or claims are presented, contests initiated, trials had at which evidence is presented, reported stenographically, and, upon the records so made up, the register and receiver render their decision. The parties aggrieved have the right of appeal from this tribunal to the commissioner of the general land office, in whose bureau a legal force review the entire record as made up and prepare decisions for the approval of the commissioner. From the decisions of the latter officer, appeals are allowed to the secretary of the interior, whose position in such cases is somewhat analogous to a supreme court or court of last resort. It is important, therefore, that in the office of the secretary of the interior, appealed cases shall have a thorough review, both as to the law and facts, and that cases be disposed of as nearly as may be in strict accordance with the law and the facts, and a force of skilled lawyers is occupied in the consideration of records and the drafting of tentative decisions for the consideration and approval or disapproval of the secretary of the interior. In a somewhat similar way the public has been accorded the right of appeal to the secretary from the final action or decisions of the reclamation commission, of the director of the geological survey, the commissioner of Indian affairs, and the commissioner of pensions. The thousands of cases so transferred to and considered

by the secretary render it absolutely impossible for him to give personal consideration to all, and he must rely upon the summary of facts and the presentation of the law by subordinates, although in the more important or complex cases he does find time to give them personal consideration.

The fact that many of these cases involve the homes, fortunes, or personal well-being of parties litigant makes it vitally important that each case be given most careful attention, so that the law may be fairly and impartially administered and that equity be done wherever possible. It is also important that the decisions in cases involving like principles shall be uniform and that when precedents have been established that they may be adhered to, so that the public may be guided in the future thereby. Where a number of lower tribunals or where a number of individual attorneys in the secretary's office are engaged upon the work of reviewing these numerous cases, it is vitally important that some reviewing body shall harmonize and coördinate the decisions, establish and maintain a just and uniform practice, and exercise a general supervision and outlook over the entire field. It is further important that some administrative authority control the assignment and output of the work, see that cases are considered in their regular order, not delayed or overlooked, and also see that they are disposed of within the shortest practicable time consistent with their full consideration.

Realizing the situation, Congress in 1913 provided for the establishment in the interior department of a board of appeals consisting of three members, to be appointed by and be under the control of the secretary of the interior. This board consists of experienced lawyers familiar with the practice and procedure of the interior department and its various bureaus and with actual conditions in the public-land districts, which include territory from southern Florida to the Arctic Circle. This board is charged with general review work of the office of the secretary of the interior in public land and miscellaneous matters, and such other work as the secretary may from time to time direct it as a whole, or any individual member thereof, to perform.

The board sits in all oral arguments made in pending cases by

attorneys and claimants, and in addition requires attorneys of the force of the interior department to appear before it personally and present orally the facts in important cases where the claimants are not represented by local counsel. All decisions prepared are considered and reviewed by the board, careful attention being given to the facts in each case, to the applicable laws, and to the equities of claimants in cases entitled to equitable consideration and disposition.

Since the creation of the board there has been a marked increase in the number of cases decided and disposed of, and the arrearage of pending cases has been reduced from approximately 3,000 to 800. The benefits so far found to have resulted from the creation of the board may in part be summarized as follows:

1. Large increase in work disposed of.
2. More thorough and careful consideration of all cases.
3. Improvement in the character of decisions.
4. Stability and uniformity of decisions rendered.
5. Relief in part of burden of consideration of cases heretofore imposed upon the secretary of the interior and consequent opportunity for him to devote more time to administrative matters.
6. Full consideration of all facts and equities in the cases, to the end that substantial justice and equity may be extended to all litigants.

In addition to the matters enumerated, the board, or members thereof, frequently act in advisory capacity to the secretary of the interior with respect to matters arising in the department, and by reason of their intimate and general knowledge of conditions derived through their work are called upon to aid in the drafting of legislation affecting matters within the jurisdiction of the department of the interior.

Under the law, the board of appeals in and of itself has no final authority or power, but acts in an advisory capacity to the secretary of the interior. There has been some suggestion that its powers should be broadened so as to make its decisions final and not subject to review by political officers. Whether this change would be advisable is somewhat doubtful. Secretaries of the

interior are usually broad-minded and capable men and not disposed to permit politics or expediency to influence them in the decision of cases; nor are they likely to overrule the recommendation made to them unanimously by the board of appeals after it has fully gone into the law and facts of a case. Furthermore, the secretaries usually come to office directly from the people, familiar with conditions from the viewpoint of the outside business man or lawyer, with new and improved ideas as to general policy, and are thus able to suggest improvements in existing laws and regulations, and blend in the exercise of the office the administrative and judicial functions. The present system has been found to work well from the departments' standpoint and the general opinion of those vitally interested seems to be that it is conducive of expedition, fairness, equity, and uniformity in the handling of appealed cases.

There have been suggestions made from time to time that the adjudication of land cases should be transferred to the courts, but this demand seems to come largely from claimants or attorneys who have been unfortunate enough to be upon the losing side of cases. It is manifestly impossible for the interior department, or for any other tribunal, to render a decision in a contested case involving two or more parties which will be satisfactory to *all* concerned, and the transfer of jurisdiction could not cure this condition. It would result, however, in a very material increase in the time required to dispose of cases, because practically all of our courts have already more legal business than they can dispose of in a reasonable time. This would not be the most serious feature, however, to the claimant. Before the courts he would be required to employ an attorney and to have made up elaborate records, required in most places to be printed, the procedure involving an expense which the average claimant would be unable to bear. The result would be that the man with money would have a tremendous advantage and the poor man might lose a meritorious case through inability to proceed. Before the interior department he is not required to do any of these things. His appeal and argument may be written by himself, presented by himself, and will receive the same careful

and painstaking consideration as if he were represented by the ablest lawyer of the land. Thousands of homesteaders and others who can not afford to retain lawyers file their own appeals, in their own simple language, and the department sees that they have all that the law allows and that equity is done in cases where the application of equitable doctrine is proper. The decision of the interior department is final as to the facts and very persuasive as to the law, the courts generally following it. However, it is not impossible to secure a legal review of questions of law, for after the interior department has issued its patent for a tract of land, if it has made an error of law, the matter can be brought into the courts and there tried out. The fact is, however, that comparatively few of the cases are so taken to the court, and those generally are the ones involving large values where both parties are able to bear the heavy expense incident to such litigation. No court could or would give to these homesteaders, mineral and other claimants the patient advice and assistance which they receive from the department of the interior, and I do not hesitate to say that in the long run substantial justice and the well-being of all our people is best secured by the system which has been in force for so many years, and which recent improvements and new laws have brought to a high state of efficiency.

It is not the purpose of congress in developing and disposing of the public resources to involve our citizens in a mass of technicalities or to afford lawyers a forum for long-winded arguments upon moot questions or upon matters of the "letter" rather than the "spirit." On the contrary, it is the purpose to give to each qualified citizen of the United States, rich or poor, educated or uneducated, an equal opportunity to secure his home upon the public domain or to take his part in the development of our material resources under a system which will compel him to meet the law's reasonable requirements but under which he shall, without undue technicality or delay, secure substantial justice. To so administer the law and to thus aid in the well-being of our country is the constant effort of the board of appeals and of the entire department of the interior.